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Procedures And Practices
For Employment Of
Consultants And Experts
Need Improvement B-164031 (1)

Department of Health, Education,
and Welfare

Civil Service Commission

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

APRIL 1, 1971

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the Secretary of Health, Education,
and Welfare and the Chairman, Civil
Service Commission:

This is our report on the need for improvement in the procedures and practices for employment of consultants and experts. The significant contents of the report are summarized in the digest which is bound in the report.

Copies of this report are being sent to the Senate and House Committees on Post Office and Civil Service; the Senate and House Committees on Government Operations; the Senate and House Committees on Appropriations; Representative Edith Green; and the Director, Office of Management and Budget.

Comptroller General
of the United States

· COMPTROLLER GENERAL'S
REPORT TO THE SECRETARY OF
HEALTH, EDUCATION, AND WELFARE
AND THE CHAIRMAN,
CIVIL SERVICE COMMISSION

PROCEDURES AND PRACTICES FOR
EMPLOYMENT OF CONSULTANTS AND
EXPERTS NEED IMPROVEMENT
Department of Health, Education,
and Welfare
Civil Service Commission B-164031(1)

D I G E S T

WHY THE REVIEW WAS MADE

This review was made because of the increasing use of consultants and experts by Federal departments and agencies.

The General Accounting Office (GAO) has selected the Department of Health, Education, and Welfare (HEW) for its examination because, of all Government agencies, HEW has had the greatest number of consultants and experts on its rolls.

The review included only those HEW consultants and experts paid by the day. It did not include consultants and experts hired to perform specific tasks for specific sums of money. (See p. 6.)

Because the Civil Service Commission has responsibility for overseeing agencies' employment of such individuals, GAO also has reviewed the procedures followed by the Commission in overseeing department and agency practices to prevent misuse of the consultant and expert appointment authority.

FINDINGS AND CONCLUSIONS

HEW qualified 9,075 individuals for service as consultants or experts during the 15-month period ended April 5, 1969. Less than half of them received compensation.

Of those who received compensation

- 3,697 received less than \$1,000,
- 575 received over \$1,000 but less than \$5,000, and
- 132 received \$5,000 or more.

About \$3 million was paid to consultants and experts during this period (See p. 10.)

GAO chose for review 10 cases in which the consultant or expert had received full-time or nearly full-time compensation during his period of

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APRIL 1, 1971

service. GAO's selection was made on the premise that these cases would best test HEW's procedures for limiting the hiring of consultants and experts to situations in which the circumstances conformed to the requirements of law and the Civil Service Commission.

Seven of the 10 persons subsequently accepted regular Government positions in which they performed duties identical or similar to those that they performed as consultants or experts. (See p. 10.)

GAO concluded that all 10 had performed worthwhile services, but the data accumulated by GAO indicated that in eight cases there were deviations from the laws and Civil Service instructions in the type of appointment, length of appointment, services performed, or a combination of the foregoing. According to data accumulated by GAO:

- Six consultants engaged in work which was more operational than advisory, despite Civil Service instructions prohibiting the use of consultants for operational duties. (See pp. 12 to 15.)
- Five consultants or experts occupied full-time continuing positions, although instructions required that these positions be filled with civil service employees. (See pp. 16 to 18.)
- Three consultants or experts were employed longer than was permitted under Civil Service instructions. (See pp. 19 and 20.)
- Two were employed as experts without sufficient evidence in HEW files that they possessed the superior skills required. (See pp. 20 and 21.)

HEW indicated that two experts who were appointed to full-time continuing positions had been urgently needed to staff new programs and that, because of Civil Service instructions, they could not have been appointed as regular Government employees. (See p. 18.)

GAO concluded that many of the persons who hired the consultants and experts were not sufficiently familiar with the requirements applicable to the employment of consultants and experts.

HEW staff members did not seem to understand that:

- There was a difference between consultants and experts in that consultants may only advise whereas experts may perform operating functions.
- The use of persons appointed as consultants and experts in full-time continuing positions was prohibited.
- Persons appointed as experts must be more than merely qualified individuals; they must possess superior skills in their fields.

--The Civil Service Commission had procedures available for filling urgent needs for personnel or requirements for persons with rare skills. (See pp. 22 and 23.)

The Civil Service Commission enters into written agreements with Federal agencies, under which it authorizes the agencies to appoint consultants and experts without prior approval by the Commission. At the time of GAO's review, the Commission monitored the agencies' use of this authority by reviewing appointment documents that described the duties that the consultants or experts were being hired to perform.

In HEW's case the Commission's monitoring method was not effective because the duties described in many of the documents that GAO reviewed were not the same as the persons' actual duties. Review of the documents would not, therefore, always reveal violations of laws and instructions.

Over half the persons qualified for employment as consultants and experts by HEW either did not perform any services or did not receive any compensation. The time spent by Commission personnel in reviewing appointment documents for such persons served little useful purpose (See pp. 27 to 29.)

Because GAO's sample included consultants and experts who had received full-time or nearly full-time pay, it could not be considered as typical, nor could GAO's findings in these 10 cases be considered as representative of what would be found if a review were made of all HEW appointments of consultants and experts.

These cases have shown, however, that neither HEW's procedures for controlling the hiring and use of consultants and experts nor the Civil Service Commission's procedures for monitoring other agencies' procedures are effective enough to ensure that laws and instructions governing the employment of consultants and experts are being complied with.

Therefore GAO believes that a more complete review of HEW's appointments of consultants and experts likely would reveal a significant number of additional cases in which the appointments did not comply with all the laws and instructions governing such appointments. GAO expects that this would be especially likely for the 48 additional cases not included in its review, in which individuals employed as consultants or experts were subsequently appointed to regular Government positions.

To advise HEW and the Civil Service Commission of its findings at an early date, GAO is reporting on the 10 cases without doing the additional work necessary to establish the full scope of the problem.

RECOMMENDATIONS OR SUGGESTIONS

Compliance with the laws and instructions governing the employment of consultants and experts protects the civil service system which, in turn, protects both the Government and its employees by ensuring a stable career work force for the Government and job stability and related benefits for the employees.

The Secretary of HEW should provide all agencies of the Department with:

- A clear explanation of the distinction between consultants and experts and of the types of positions to which each can be appointed.
- A statement explaining that persons appointed as consultants and experts are not to hold full-time continuing positions.
- A requirement that, prior to the employment of an individual as an expert, positive determination be made and documented in the files that the individual actually does possess superior skill in his field.
- A statement explaining the special procedures which the Civil Service Commission can employ to fill urgent needs for personnel or requirements for persons with rare skills.

The Secretary should provide also for periodic administrative reviews of the records of consultants and experts employed by HEW agencies, to determine whether applicable laws and instructions are being complied with. (See p. 25.)

The Chairman, Civil Service Commission, should:

- Amend the Commission's agreement with HEW to require HEW to make periodic administrative reviews of its use of consultants and experts and to provide for examination of the results by the Civil Service Commission. (See p. 30.)
- Amend the Commission's instructions to clarify how different two assignments must be to justify continued or second-year appointments. (See pp. 25 and 26.)
- Consider earnings data and other statistical-sampling methods, as appropriate, in the Commission's review of expert and consultant appointments and should give special consideration to consultants and experts earning substantial sums. (See p. 30.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Civil Service Commission agreed with GAO's recommendations and advised that appropriate changes would be made in its instructions and

operating practices. Representatives of HEW indicated that GAO recommendations would receive consideration in planned changes in their procedures designed to improve HEW's control over the use of consultants and experts. (See pp. 25 and 29.)

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ABBREVIATIONS

GAO General Accounting Office

HEW Department of Health, Education, and Welfare

*COMPTROLLER GENERAL'S
REPORT TO THE SECRETARY OF
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AND THE CHAIRMAN,
CIVIL SERVICE COMMISSION*

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These cases have shown, however, that neither HEW's procedures for controlling the hiring and use of consultants and experts nor the Civil Service Commission's procedures for monitoring other agencies' procedures are effective enough to ensure that laws and instructions governing the employment of consultants and experts are being complied with.

Therefore GAO believes that a more complete review of HEW's appointments of consultants and experts likely would reveal a significant number of additional cases in which the appointments did not comply with all the laws and instructions governing such appointments. GAO expects that this would be especially likely for the 48 additional cases not included in its review, in which individuals employed as consultants or experts were subsequently appointed to regular Government positions.

To advise HEW and the Civil Service Commission of its findings at an early date, GAO is reporting on the 10 cases without doing the additional work necessary to establish the full scope of the problem.

RECOMMENDATIONS OR SUGGESTIONS

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The Civil Service Commission agreed with GAO's recommendations and advised that appropriate changes would be made in its instructions and

operating practices. Representatives of HEW indicated that GAO recommendations would receive consideration in planned changes in their procedures designed to improve HEW's control over the use of consultants and experts. (See pp. 25 and 29.)

CHAPTER 1

INTRODUCTION

The General Accounting Office has reviewed the practices of the Department of Health, Education, and Welfare in employing consultants and experts who were paid by the day (per diem basis). Consultants or experts hired to perform specific tasks for specific sums of money were not included in the scope of our review. The review was made because of the increasing use of consultants and experts by agencies of the Federal Government. The scope of our review is described on page 31.

Our review included an evaluation of the effectiveness of the practices followed by HEW in employing consultants and experts on a per diem basis and a determination of whether the practices conformed to laws and instructions governing such employment. Because the effectiveness of such procedures and practices was more likely to be tested by cases in which consultants and experts were employed on a full-time or nearly full-time basis, our efforts, for the most part, were concentrated on such cases. We also considered the effectiveness of procedures followed by the Civil Service Commission in overseeing the Federal agencies' use of consultants and experts.

REQUIREMENTS GOVERNING EMPLOYMENT OF CONSULTANTS AND EXPERTS

Under the United States Code (5 U.S.C. 3109), HEW, along with other Government agencies, has authority to hire consultants and experts without regard to Civil Service laws. Such authority is subject to a specific authorization in appropriation acts or other statutes. This authorization has been included in HEW's annual appropriation acts.

Responsibility for controlling the employment of consultants and experts by Government agencies is vested in the Civil Service Commission which has issued instructions supplementing the requirements of the law cited above.

Under Civil Service instructions, a distinction is drawn between consultants and experts. Consultants are defined as persons who serve an officer or instrumentality of the Government in an advisory capacity. Ordinarily, a consultant may be expert in a certain field, but he need not be a specialist. The main requirement is that his ability and knowledge will make his advice of distinctive value to an agency. An expert, on the other hand, must be a person having unusual competence and skill in his particular field. He must clearly possess skills superior to those usually possessed by persons with ordinary competence in that activity.

The distinction between a consultant and an expert is of importance because, under Civil Service instructions, consultants can only advise. They are prohibited specifically from performing or supervising operating functions. There is no such prohibition on the employment of experts.

Further, 5 U.S.C. 3109 and Civil Service instructions limit the authority to hire both consultants and experts to situations in which certain specific conditions exist. Some of the more important conditions follow.

1. The authority to hire a consultant or expert may not be used if the job calls for full-time continuing employment.
2. If employment is on a temporary basis (over 130 days in a year), the consultant's or expert's tenure cannot exceed 1 year. Full-time employment under a succession of short-term contracts is also limited to 1 year. (28 Comp. Gen. 670)
3. If employment is on an intermittent basis (not more than 130 days' work in a year), there is no limit to the consultant's or expert's tenure, but the work must be occasional or irregular.

HEW has issued to its employees instructions which do not differ materially from the instructions issued by the Civil Service Commission.

SIGNIFICANCE OF REQUIREMENTS APPLICABLE
TO EMPLOYMENT OF CONSULTANTS AND EXPERTS

Information obtained from the Civil Service Commission indicated that the civil service system had been created to protect the job tenure of Government employees when political changes occurred and, in this way, to ensure that such jobs would have enough stability to attract career employees. Those who choose Government service as a career have definite rights and privileges which afford them job stability and an attractive retirement program.

Equally important is the function of the Civil Service Commission to ensure that all citizens have equal opportunity to obtain Government jobs and that those chosen are the most qualified persons available for the positions to be filled. For most administrative, technical, and professional positions, career employees are appointed under the General Schedule. Positions under the General Schedule are graded according to the difficulty and responsibility involved. The grades are designated as GS grades which currently run from GS-1 at a starting salary of \$4,326 to GS-18 at a salary of \$36,000.

Compliance with the laws and instructions governing the employment of consultants and experts is deemed of particular importance by the Civil Service Commission in maintaining the integrity of the civil service system. Individuals hired as Federal Government employees under the civil service system generally are chosen on a competitive basis, and such qualifications as education and experience are considered.

Unless the rules relating to employment of consultants and experts are followed, consultants and experts may be appointed to fill positions that should be filled by regular civil service employees. Such action not only tends to destroy the morale of career Federal employees but also bypasses the competitive civil service procedures established to give every citizen equal opportunity to secure career civil service positions. Moreover, when an employee is employed as a consultant or an expert to fill what should be a regular Government position, he does not get the job protection afforded by the civil service system nor does he participate in the Government retirement program.

Since the instructions governing the hiring of consultants and experts were designed to protect both the Government and its employees, it is important that these instructions be complied with. If they are not, consultant and expert appointments could be made to such an extent that the effectiveness of the civil service system could be seriously affected.

Another effect of failing to adhere to the requirements regarding the hiring of consultants and experts is the tendency to obscure the agencies' status in relation to personnel ceilings imposed by congressional or executive action.

CHAPTER 2

REQUIREMENTS FOR EMPLOYMENT OF

CONSULTANTS AND EXPERTS NOT FOLLOWED

During the 15-month period ended April 5, 1969, 9,075 persons were qualified by HEW for employment as consultants or experts on a per diem basis. Of these, over half, or 4,671, received no compensation and thus either were not used by HEW or rendered services without compensation. Of the remainder, 3,697 received less than \$1,000 each, or a total of about \$1 million, and the remaining 707 received a total of about \$2 million. A listing of the number of consultants in various pay categories for the 15-month period follows.

<u>Pay category</u>	<u>Number</u>
No compensation	4,671
\$ 1 to \$ 999	3,697
1,000 to 4,999	575
5,000 to 9,999	91
10,000 to 14,999	33
15,000 or more	<u>8</u>
Total	<u>9,075</u>

We selected for review 10 cases in which the consultant or expert had received what appeared to be full-time or nearly full-time compensation during the 15-month period or in which the consultant or expert had been converted to civil service status during this period, after receiving full-time or near full-time compensation prior to being converted. In making our selection, we concentrated on the consultants and experts that received the highest total compensation and those that ultimately became regular Government employees. Thus the 10 cases included seven of the 55 instances in which persons who worked as consultants or experts during all or part of the period of our review became full-time regular employees of HEW.

In eight of the 10 selected cases, the evidence which we compiled indicated that HEW had not complied with one or more of the requirements for employment of consultants or experts. We found that:

- Six persons employed as consultants were engaged in work which we believe was more operational than advisory, despite the Commission's instructions prohibiting consultants from performing operational duties.
- Five persons employed as consultants and/or experts occupied what the record indicated were full-time continuing positions, although the instructions required that full-time continuing positions be filled with regular Government employees.
- Two persons were employed as experts, although their personnel files contained no evidence that they possessed the superior skills required for such appointments.
- Three persons were employed as consultants or experts longer than was permitted under the instructions.

Although the appointments of eight of the 10 consultants or experts were improper in one respect or another, our review of the files indicated that all the consultants and experts had performed valuable services for the Government during their periods of employment. Therefore we are not questioning their competence or diligence but instead we are questioning their appointments' compliance with employment requirements.

A listing of the 10 consultants' and experts' periods of employment and the pay that they received is presented in the appendix. Details of our findings follow.

CONSULTANTS USED TO PERFORM OPERATING FUNCTIONS

Civil Service instructions prohibit the hiring of consultants and experts for performing regular operating duties. Of the 10 persons included in our sample, eight were employed as consultants (one of the eight was appointed as a consultant and later as an expert). The information that we obtained on the duties of six of the eight consultants indicated that they had performed operating functions, despite the specific prohibition in Civil Service instructions against consultants performing operating functions. A brief description of the work done by these six consultants is presented below.

Consultant 1 did work involved in programming a computer to solve medical care problems. The HEW employee to whom she reported stated that the consultant was a regular employee in all respects and that her duties were necessary in the day-to-day operations of his division. He also stated that it was more expedient for the consultant to both analyze and do the work, rather than advise someone else on how to do the work after analyzing the data.

Consultant 2 worked on a task force studying prescription drugs. The director of the division which employed him acknowledged that his duties were operational rather than advisory.

Consultant 3 worked as a consultant during fiscal year 1967 and as an expert during fiscal year 1968 until his appointment as a GS-14 on March 24, 1968. He participated in community organization and program-planning activities relating to the development of programs for older persons and in the administration of a new formula grant program for older Americans. His supervisor informed us that the regular Government position assumed by this individual was created in 1965 and that his period of employment in the agency as a consultant had provided him with the necessary experience to qualify for this position. He added that the difference between the duties performed by this individual as a consultant and those performed by him as a regular

Government employee was very small and that the duties performed by the individual as a consultant were, in his opinion, no different from those performed by regular Government employees on the staff in similar capacities.

Consultant 4 was initially used to help establish an HEW magazine. We were informed that this work had lasted only a few months of the year during which he was employed as a consultant. During the year he also wrote speeches, rendered other editorial services, and coordinated selected public information projects involving two or more agencies of HEW. We were told that his duties were the same after he was employed as a regular Government employee as they had been during his year as a consultant.

Consultant 5 analyzed costs under the Medicare program. She informed us that a regular employee previously had done the work that she did as a consultant and that she was developing and analyzing, not advising. She stated that her duties were operational and an integral part of the division.

Consultant 6's duties included preparing indexes for, and reviewing supplements to, various manuals to ensure correctness. The consultant informed us that these duties were necessary to the operation of the division for which he worked.

All of these six consultants ultimately were hired as regular Government employees, and we were informed that they had continued to do the same or very similar work.

In commenting to us on these cases, HEW stated that in its view the appointments of the six persons as consultants represented a proper use of the authority under which the appointments had been made. It stated, however, that in some cases the functions had changed and that the persons appointed as consultants perhaps should have been called experts as these terms were defined by the Civil Service Commission. HEW stated also that the failure to change the designation from consultant to expert did not make the appointments improper.

We do not agree with HEW's position. We agree that the appointment documents indicate that the duties of each of the six persons could be consulting duties. We learned from interviews with the persons involved, however, that for the most part these documents had not fully or adequately described the duties that these consultants were to actually perform. In four cases the documents indicated that HEW had considered appointing the persons either as regular Government employees or as consultants but had decided to hire them as consultants. We were informed by HEW officials that the reasons for hiring these four persons as consultants instead of as regular Government employees were as follows:

--In two cases, the persons expressed a preference for appointments as consultants.

--In two cases the persons did not meet Civil Service requirements for the positions as GS employees; one had not passed the Federal entrance examination and the other lacked sufficient years of experience.

In the fifth case, the person was hired as a consultant to fill a position formerly filled by a regular Government employee. So far as we could determine, the appointment was made without any consideration having been given to employing this person as a regular Government employee instead of as a consultant. In the remaining case the person was hired to do work that appeared to be more operational than that done by a consultant but actually did consultant work for a few months before assuming the operational duties for which he had been hired.

Moreover, we do not agree with HEW that these six persons should have been considered to be experts instead of consultants and that the appointments therefore were not improper. Civil Service instructions do not permit changing the designations of persons from consultants to experts at will. The requirements for consultants and experts are different. Unlike consultants, experts must be persons possessing superior skills in their professions. As we interpret this requirement, the Civil Service is attempting to limit the hiring of experts who may engage in operating functions and who may compete with civil service employees

to those individuals clearly of superior ability whom the Government might not be able to employ as permanent employees.

The HEW personnel files for the six consultants indicated that they were skilled professional persons but did not show that they possessed superior skills or otherwise qualified as experts. Therefore we do not believe that HEW has properly applied the Civil Service requirements which state that, to qualify as an expert, superior skills are required. Instead, from HEW's comments we concluded that HEW tended to consider anyone as an expert if he possessed a skill that HEW employees did not possess.

CONSULTANTS AND EXPERTS EMPLOYED TO FILL
FULL-TIME CONTINUING POSITIONS

Section 3109, Title 5, United States Code, restricts the employment of consultants and experts to an intermittent or a temporary basis. Inherent in this restriction is a prohibition on the hiring of experts and consultants when the jobs to be performed call for full-time continuing employment. As discussed below, we found considerable evidence that, of the persons included in our review, five who were appointed as consultants or experts had been hired to fill positions which were expected to be full-time continuing positions.

Consultant 1's supervisor informed us that repeated attempts had been made to induce her to accept a regular GS position but that she would accept employment only as a consultant. After she had performed as a consultant for a year, she accepted a permanent appointment at the GS-14 level. Her supervisor stated that the duties that she performed were necessary and important functions in day-to-day operations. From the record it appears that the Social Security Administration fully intended to employ her as a full-time continuing employee from the start of her employment.

There was a regular Government position available at the GS-14 level that had been created in 1965 to which consultant-expert 3 was ultimately appointed; but, at the time that the position was created, he did not qualify under Civil Service requirements because he lacked sufficient years of experience. Consultant-expert 3's assignment was to help devise and administer a new program, which there was no reason to believe would not be a continuing one, for which consultant-expert 3's services would be needed indefinitely.

Upon completion of his assignment to work on the development of a general-interest magazine, consultant 4, still as a consultant, assumed the duties of a former regular employee, which involved writing speeches and editorial services. After performing for about 1 year as a consultant, he assumed a regular position

involving the performance of the same duties as those performed throughout most of the period that he had served as a consultant. Evidence in his personnel file indicated that the position occupied by this individual was a full-time continuing position rather than a temporary one.

We were informed that consultant 6 had been employed by the Social Security Administration to update and prepare indexes for manuals and to review supplements to various manuals. He was employed as a consultant for nearly 3 consecutive years within the same agency. Administration representatives informed us that personnel ceilings had not been a compelling factor in not offering consultant 6 a GS position. They stated that the compelling factor had been that they could not hire him at the GS-11 or GS-12 level because he had not qualified through the Civil Service Commission for an appointment at those levels. Consultant 6 was appointed to a GS-12 position after he had passed the necessary Civil Service Commission examination and after he had been employed on a full-time basis as a consultant for about 3 years.

Expert 8 was hired to help develop and participate in a new program for the Social Security Administration. Administration officials informed us that initially they had attempted to employ him in a GS position but that he could not qualify at the proper level. They stated that they felt that his position had justified a GS-12 rating. Expert 8 was on the Civil Service register for positions at the GS-13 level and above, but we were informed that he had not been on the register for GS-12's and that, at the time of his appointment, the appropriate examination for a GS-12 rating was not being offered by the Civil Service Commission. We were also informed that expert 8 subsequently had passed the examination and that, at the conclusion of his appointment as an expert, he had been given a GS-12 position doing essentially the same work. From the record there is little doubt that the Administration intended to hire expert 8 as a permanent full-time employee and that the use of the expert authority to appoint him was inappropriate.

We believe that HEW needs to establish more stringent controls to prevent the filling of full-time positions with consultants and experts. HEW advised us that its authority for appointing experts had been used in two of the cases (experts 3 and 8) because qualified persons had been urgently needed to staff new programs and because HEW had been blocked by Civil Service instructions from hiring the persons selected. So far as we could ascertain, however, HEW did not take advantage of special procedures which the Civil Service Commission informed us were available for filling urgent needs for personnel or for offering higher salaries to persons with rare skills.

LENGTH OF EMPLOYMENT LONGER THAN PERMITTED
BY LAW AND APPLICABLE INSTRUCTIONS

Civil Service instructions state that consultants and experts employed for not more than 130 working days a year are intermittent employees and can be employed indefinitely in that capacity. If, however, a consultant or an expert works for more than 130 days a year, he is considered a temporary employee and, as such, cannot work for more than 1 year.¹ In three of the cases that we reviewed, the evidence that we obtained indicated that these requirements had not been followed. Our findings in these three cases are presented below.

Consultant-expert 3 was employed full time for 21 consecutive months by the Social and Rehabilitation Service. During that time he was paid for 460 days and earned about \$25,000. At the conclusion of the 21-month period, he accepted a GS-14 position with the Service, and an HEW official advised us that he had continued to perform the same duties as those performed while he had been a consultant-expert.

Consultant 6 worked full time for the Social Security Administration from January 30, 1967, until his appointment as a GS-12 on January 28, 1970. During the 3 years he was paid for 760 days and earned about \$40,000.

Expert 7 worked for about 3 weeks longer than a year because of an administrative oversight, at which time he took a position with a non-Government organization.

The record indicates that HEW wanted to hire the individuals as permanent GS employees, except in the case of expert 7 whose too lengthy employment was attributed to administrative oversight, but could not because the individuals lacked sufficient experience to qualify under Civil Service requirements, had not passed the Civil Service entrance examination, or did not qualify for similar reasons.

¹A temporary consultant who has served for a year may be rehired as an intermittent consultant but, as such, cannot work for more than 130 days a year.

In commenting upon our findings, HEW acknowledged that expert 7 had been employed for a few weeks too long but indicated that it considered the other two cases to be appropriate because of changes in the positions occupied by the consultants or experts.

We believe that the changes in the duties performed by the two individuals were not extensive enough to warrant renewing their appointments. Admittedly, the law and Civil Service instructions are not clear on this point. A strict interpretation of the law would prohibit an agency from rehiring a temporary consultant or expert after he had worked for a year, regardless of a change in duties, except on an intermittent basis (not more than 130 days' employment a year). A liberal interpretation, in our view, could permit reappointments provided that the duties changed enough to constitute a change in the individual's position. In the two cases mentioned above, however, the changes were relatively slight and the persons involved worked in the same general capacities, in the same agencies, in the same locations, and on the same or closely related programs after their reappointments.

To permit slight changes in duties to justify reappointments of consultants or experts is to countermand the law itself. In this respect most jobs, including those to which GS employees are assigned, change slightly from year to year. Thus to permit small changes in job requirements to justify reappointments of consultants or experts is to make it possible to reappoint them continually and retain them indefinitely.

QUALIFICATIONS OF EXPERTS
NOT DOCUMENTED

Civil Service instructions require that an agency's files contain a standard application form for Government employment or another written statement showing the qualifications and background of the individual which satisfy requirements to employ him as an expert. To qualify as an expert under Civil Service instructions, an individual must possess skills superior to those possessed by persons with ordinary competence in that activity. In the case of the three persons employed as experts, HEW files contained

documents evidencing their past work history, but the documents for two of the persons--experts 3 and 8--did not show that they possessed superior skills in their particular fields of endeavor. They had skills which HEW lacked, but their expertise in their fields was not established.

The files indicated that expert 3 had experience working with the aged, a skill which none of HEW's regular employees possessed and which HEW needed. Although the files showed that expert 3 was a competent individual in his field, they did not show that he possessed superior skills in this field. Moreover, his relatively few years of experience in the area of work involved would seem to raise doubt that he was an expert.

According to Social Security Administration personnel, expert 8 was hired because he had experience in insurance claims--a type of experience which the Administration lacked. Expert 8 described his duties as principally involving the negotiation of contracts and leases with Blue Cross associations and plans throughout the country. Although his file indicated that he was competent, it did not show that he possessed superior skill in his field.

In commenting on these cases, HEW acknowledged that there may be a question of whether the appointments of experts 3 and 8 were appropriate. It stated, however, that it considered their appointments necessary because their services were urgently needed.

We believe that HEW did not comply with Civil Service instructions in these cases because it did not document, as required, that these individuals were in fact experts as defined by Civil Service instructions. The fact that HEW may have needed these persons for urgent work would not seem to relieve HEW of the responsibility to comply with Civil Service instructions.

AGENCY COMMENTS AND OUR EVALUATION

HEW stated that it believed that, in each of the 10 cases, the initial appointment was proper. HEW also pointed out that in the past decade it had been given responsibility for many new programs and that these programs often had been of an experimental or innovative nature. HEW stated that in many cases the knowledge and expertise of the persons in the existing work force had not been adequate to fulfill the new responsibilities and that, to meet these responsibilities, HEW had made increasing use of consultants and experts, many of whom were not available for, or were not interested in, full-time permanent employment. HEW also pointed out that the great majority of its consultants and experts had been employed for only a few days a year.

HEW stated that, at the time of the employment of a consultant or an expert, it was not always possible to determine when the need for his services would terminate and that in very few cases a program official, because of the pressures in carrying out assigned responsibilities, would inadvertently use a consultant or an expert in a way not contemplated at the time of his appointment. HEW pointed out that this was not done deliberately to circumvent Civil Service and classification laws, but reflected, on the part of program officials, a lack of awareness of the significance of these laws and a failure to recognize the significance of an evolutionary change in the nature of the services performed by consultants and experts.

HEW stated also that it could find no evidence of intent to circumvent the usual employment and pay laws and that it did not believe that the appointments represented a violation of its appointment authority. HEW stated further that some of the actions represented a lack of proper administrative controls and that steps had been taken to remedy this. According to HEW, each of its agencies is developing new procedures to provide for more careful reviews of initial appointments of experts and consultants, checks on the time worked by them, and periodic reviews of the duties that they are performing. HEW stated that it now had the capability, through its automated payroll and personnel data system, to notify appointing authorities on a regular basis of the number of days that consultants or experts performed services.

We concur in HEW's position that new programs have increased its needs for knowledge and expertise and that this has led to increased use of consultants and experts. As we explained earlier, our review included those cases in which consultants and experts had been compensated on a full-time or nearly full-time basis because we felt that such cases would best test the effectiveness of the administrative controls over the use of the authority to appoint consultants and experts.

We concluded that many of the persons who hired these consultants and experts were not sufficiently familiar with the requirements. Moreover, by its comments HEW indicates that it does not differentiate between consultants and experts, although there is an important distinction as previously explained. In the cases that we reviewed, we believe that the persons who made the appointments often did not have a clear understanding of Civil Service instructions governing the employment of consultants and experts. We believe also that, in some cases, when a new employee was needed, he was hired as a consultant or expert because the use of this hiring authority was considered more expedient than the procedure required for hiring a GS employee.

We believe that, because there appears to be some lack of understanding of the requirements, the measures that HEW proposes to take should help to provide appropriate corrective action. We believe, however, that the measures could be made more effective if supplemented by certain additional measures mentioned below.

CONCLUSIONS

Because each of the 10 consultants and experts included in our sample received full-time or nearly full-time pay, the group could not be considered as typical, nor could our findings in these 10 cases be considered as representative of what would be found if a review were made of all HEW's appointments of consultants and experts. These cases have shown, however, that HEW's practices for controlling the hiring and use of consultants and experts are not effective enough to ensure that laws and Civil Service instructions governing the employment of consultants and experts will be followed.

Therefore we believe that a more complete review of HEW's appointments of consultants and experts likely would reveal a significant number of cases in which the appointments did not comply with all the laws and Civil Service instructions governing such appointments. We expect that this would be especially likely for the 48 additional cases in which individuals employed as consultants or experts were subsequently appointed to regular Government positions.

To advise HEW and the Civil Service Commission of our findings at an early date, we are reporting our findings on the 10 cases without doing the additional work necessary to determine the full scope of the problem.

RECOMMENDATIONS TO THE SECRETARY OF
HEALTH, EDUCATION, AND WELFARE

We recommend that the Secretary of HEW issue additional instructions to HEW agencies, which will clarify certain matters relating to the appointment and use of consultants and experts. Such instructions should include:

- A clear explanation of the distinction between consultants and experts and of the types of positions to which each can be appointed.
- A statement explaining that consultants and experts are not to hold full-time continuing positions.
- A requirement that, prior to the employment of an individual as an expert, positive determination be made and documented in the files that the individual actually does possess superior skill in his field.
- A statement explaining the special procedures which the Civil Service Commission can employ to fill urgent needs for personnel or requirements for persons with rare skills.

We recommend also that the Secretary provide for periodic administrative reviews of the records of consultants and experts employed by HEW agencies, to determine whether laws and Civil Service instructions are being complied with.

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HEW representatives indicated that our recommendations would receive consideration in planned changes in their procedures designed to improve HEW's control over the use of consultants and experts.

RECOMMENDATIONS TO THE CHAIRMAN
OF THE CIVIL SERVICE COMMISSION

We recommend that the Chairman, Civil Service Commission, amend Civil Service instructions to clarify how different two assignments must be to justify considering a consultant or expert as having a new appointment, rather than a continued or second-year appointment to the same position.

Although Civil Service instructions are silent on this point, it has been established, in general, that a temporary consultant or expert may be reappointed after a year but only to a different position (28 Comp. Gen. 670). It is not clear, however, how extensive a change in duties must be to constitute a new position.

CHAPTER 3

NEED FOR IMPROVEMENT IN MONITORING OF

CONSULTANT AND EXPERT APPOINTMENTS

The Civil Service Commission is responsible for approving the appointments of consultants and experts by Government agencies. To avoid requiring agencies to submit each case for approval prior to appointment, the Commission enters into written agreements with agencies, whereby the agencies may appoint consultants and experts without the Commission's specific prior authorization; however, after the appointments are made, they are subject to review for conformity with applicable laws and regulations. HEW has such an agreement with the Commission.

Prior to 1967 the Civil Service Commission reviewed the appointments of currently employed consultants and experts on a sampling basis as a part of its periodic general inspections of the Federal departments and agencies. In 1967, to improve the efficiency of these reviews, the Commission's personnel management specialists began reviewing all the appointments of experts and consultants. From April 1967 through December 1968, such reviews covered approximately 90 percent of all consultants and experts employed during this period. Although procedural errors were found, relatively few instances were found of improper use of authority to appoint experts and consultants.

In view of the results of its reviews in 1967 and 1968, the Commission decided that the intensive review it had been making was not a profitable use of its limited resources, and on February 27, 1969, it adopted a policy of reviewing agency appointment action reports. Under this system each agency having an agreement with the Commission is required to submit to the Commission a quarterly report supplying information on all new appointments of consultants and experts involving more than 30 calendar days and on the reappointments of all consultants and experts whose service years ended during the quarter. The Commission then makes a 100-percent audit which consists primarily of a review of appointment documentation. The Commission, however, retains the right to make onsite inspections.

In HEW's case we question whether the Commission's procedure is as effective as might be devised to deal with this problem. As explained in chapter 2, over half, or 4,671, of the persons qualified by HEW for employment as consultants and experts during the 15-month period received no compensation during that period. To the extent that post-audits are made of the records of consultants or experts who are appointed but who receive no compensation, the effort will serve little purpose. In addition, we found that, in the 10 cases reviewed in detail, the written description of the position often had not accurately described the actual job that the person was performing. Thus, a review of the appointment documents would not always provide accurate information on the position that the consultant or expert was hired to fill.

For example, the appointment document for consultant 5 stated that her duties would be as follows:

"Special project assignments in health insurance research and translation and interpretation of documents necessary for comparative studies."

The consultant subsequently described her primary responsibilities as follows:

"*** It is my responsibility to provide current statistics, tables, charts, graphs depicting trends in medical care costs. *** I am responsible for regular reports on changes in medical care prices as well as articles and memoranda in the general field.

"*** A second area of responsibility is the study of reasonable charges as defined under the Supplementary Medical Insurance Program."

Similarly, expert 8's appointment folder indicated that he was to develop standards and criteria to evaluate the performance of insurance carriers and to conduct studies of contracts to determine whether they were consistent with the spirit of the health insurance law. Expert 8 described his duties as negotiating contracts with insurance carriers and resolving questions and problem areas involving such contracts.

To help ensure that its instructions governing the employment of consultants and experts are being complied with, we believe that the Civil Service Commission, in its evaluation of appointments, should concentrate more on those consultants and experts who receive sizable sums of money for their services. It is these consultants and experts who are most apt to be improperly occupying full-time continuing positions or to be employed longer than is permitted. Moreover, we believe that consultants receiving large sums of money are more apt to be performing operating functions than those receiving smaller sums sporadically, since an operating function usually requires employment on a more or less continual basis.

As indicated previously, only 132, or about 1-1/2 percent, of the consultants and experts employed by HEW during the 15-month period covered by our review earned \$5,000 or more, and 707 earned \$1,000 or more.

We believe that, in addition to evaluating the appointments of consultants and experts earning large sums, the Civil Service Commission should review, on a statistical-sampling basis, appointments of others earning smaller sums.

CIVIL SERVICE COMMISSION COMMENTS

The Director of the Commission's Bureau of Personnel Management Evaluation, in a letter dated September 11, 1970, advised us that the procedure for 100-percent review of agency appointment reports was a trial procedure and that, although under this procedure there had been some success, the Bureau was not satisfied with it. The Director advised us also that during the past year much thought had been devoted to devising a more effective and efficient procedure. The result of this effort, the Director stated, was a revision to chapter 304 of the Federal Personnel Manual, which was then in the final stages of completion and nearing publication. The Director advised us further that discussions with our representatives had been helpful in formulating those new procedures, particularly with respect to using earnings as a means of identifying situations for detailed scrutiny.

RECOMMENDATIONS TO THE CHAIRMAN
OF THE CIVIL SERVICE COMMISSION

We recommend that the Chairman, Civil Service Commission, in revising the Federal Personnel Manual and the Commission's system for monitoring agency appointments of consultants and experts, consider:

- Amending the agreement with HEW, under which HEW derives its authority to appoint consultants and experts, to require HEW to make periodic administrative reviews of the use of consultants and experts by its various constituent agencies and to provide for the Commission's examination of the results of such reviews.
- Providing for consideration of data on payments to consultants and experts and other statistical-sampling methods, as appropriate, in the Commission's review of appointments of consultants and experts and for special consideration of those consultants and experts earning substantial sums (perhaps \$5,000 or more annually).

CHAPTER 4

SCOPE OF REVIEW

We examined personnel and pay records for consultants and experts employed by HEW. We reviewed pertinent laws and instructions issued by the Civil Service Commission and HEW and decisions of the Comptroller General of the United States. In addition, we interviewed officials of the Civil Service Commission and HEW and the consultants and experts selected for review and their supervisors.

APPENDIX

EMPLOYMENT DATA ON CONSULTANTS AND EXPERTS
INCLUDED IN GAO REVIEW

<u>Number</u>	<u>Employed as</u>	<u>Period employed</u>	<u>Number of days for which consultant or expert was paid</u>	<u>Gross earnings</u>	<u>Employing agency</u>
1	Consultant	7-12-67 to 7-11-68	240	\$18,000	Social Security Administration
2	Consultant	7- 3-67 to 6-22-68	259	15,540	Social Security Administration
3	Consultant Expert	6-20-66 to 6-30-67 7- 3-67 to 3-23-68	270 <u>190</u> 460	14,254 <u>11,180</u> 25,434	Social and Rehabilitation Service
4	Consultant	2-27-67 to 2- 9-68	247	19,000	Office of the Secretary, HEW
5	Consultant	1- 3-67 to 12-29-67	260	13,000	Social Security Administration
6	Consultant	1-30-67 to 1-27-68 1-28-68 to 1-22-69 1-28-69 to 1-27-70	260 250 <u>250</u> 760	12,873 13,438 <u>13,860</u> 40,171	Social Security Administration
7	Expert	2-10-68 to 3- 1-69	263	22,000	Office of the Secretary, HEW
8	Expert	5- 8-67 to 4-21-68	262	11,000	Social Security Administration
9	Consultant	3-14-66 to 7-25-70	(note a)	(note a)	National Institute Health
10	Consultant	5- 8-66 to 6- 4-67 6- 5-67 to 6- 4-68 8- 6-68 to 4- 5-69 4- 6-69 to 7-25-70	78 209 121 (note a)	5,300 14,630 9,075 (note a)	Public Health Serv Various HEW agencies

^aIntermittent (no more than 130 days a year) employee.